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In re application of:

Scheller et al.

Serial No. 10/586,018

Filed: October 26, 2006

For: Surgical Instrument Handle with  
Adjustable Actuator Position

Examiner: Chen, Victoria W.

Group Art Unit: 3739

REPLY BRIEF TO EXAMINERS ANSWER UNDER 37 CFR § 41.41

The following remarks are presented in reply to new arguments raised by the Examiner in the "Response to Argument" section of the Examiner's Answer having a notification date of February 5, 2010.

In the "Response to Argument" section, it is stated that with regard to the claim element "a forward grip member" that appears in the independent claims 1, 3 and 8, "the trigger arms [20, Fig. 3] as disclosed by Richards meet the claim limitation because all the triggers are operatively associated and work together to affect a single function", and that "they effectively form a forward grip member, the forward grip member having a plurality of resilient arms [20, 20T, 20H, Fig. 3A]."

It is respectfully submitted that the described interpretation of the Richards reference is made in error in that it interprets the six triggers 20 of the Richards reference as two different elements of the invention recited in the claims. The trigger 20 are interpreted as both the "forward grip member" recited in the independent claims 1, 3 and 8, and as the "plurality of resilient arms" recited in claims 1, 3 and 8. The rejection of the claims should therefore be reversed and the claims allowed.

Furthermore, it is pointed out that each of the independent claims 1, 3 and 8 recite "a plurality of resilient arms". It is respectfully submitted that the Richards reference fails to identically show "resilient" arms, and therefore fails to anticipate this feature of the claimed invention.

There is no disclosure and the final rejection has not identified any description of the Richards triggers 20 as being resilient. A common dictionary definition of the word "resilient" is "returning to the original form or position after being bent, compressed, or stretched". "resilient," Dictionary.com Unabridged. Random House, Inc., 01, April 2010. <Dictionary.com <http://dictionary.reference.com/browse/resilient>>.

With there being no disclosure of the triggers 20 of the Richards reference being resilient, the reference fails to identically disclose every element of the claimed invention

and therefore fails to anticipate the application claims. The rejection of the claims should therefore be reversed and the claims allowed.

Furthermore, it is respectfully submitted that due to the pivoting movement of the Richards triggers 20 in the operation of the Richards instrument, any resilient bending of the trigger portions 20F would detract from the movement of the trigger retainer 22. The construction of the Richards instrument therefore teaches away from the trigger 20T being resilient as recited in the application claims. For these additional reasons it is respectfully submitted that the rejection of the application claims is made in error and should be reversed and the claims allowed.

It is also noted in the "Response to Argument" section, that the "examiner suggests more descriptive claim language, such as - - a forward grip member formed of a plurality of integrally connected resilient arms - - which would better suggest a single structure." However, language similar to this already appears in independent claim 3 which recites "a plurality of resilient arms integrally connected with the forward grip member". In view of this suggestion by the Examiner, it is respectfully submitted that claim 3 is allowable over the prior art and the rejection of the claim is made in error and should be withdrawn and the claim allowed.

It is also stated in the "Response to Arguments" section that the elements 20H of the Richards reference "are part of elements 20T, which together are interpreted by the examiner to comprise the distal end portions of the resilient arms." However, a common dictionary definition of the word "end" is the last part or extremity, lengthwise, of anything that is longer than it is wide or broad. "end." Dictionary.com Unabridged.

Random House, Inc., 01 April, 2010.

<Dictionary.com <http://dictionary.reference.com/browse/end>>. A common dictionary definition of "distal" is situated away from the point of origin or attachment. "distal" Dictionary.com Unabridged. Random House, Inc., 01 April 2010. <Dictionary.com <http://dictionary.reference.com/browse/distal>>. Therefore, a common understanding of the term "distal end" is the last part or extremity of anything that is situated away from the point of origin or attachment.

In the Richards reference, the tie arm hooks 20H are the last part or extremity of the tie arms 20T, as argued in the Appeal Brief. Because the Examiner's interpretation of the claim language is inconsistent with common dictionary definitions of the claimed terms, it is respectfully submitted that the rejections of the claims are made in error and should be reversed and the claims allowed.

Respectfully submitted,

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